

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID JOHNSON,
Booking #11171933,

Plaintiff,

vs.

D. GARREN, San Diego Police ID #5945,

Defendant.

Civil No. 11-2592 LAB (BLM)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY
FILING FEE REQUIRED
BY 28 U.S.C. § 1914(a) AND/OR
FAILING TO MOVE TO PROCEED
IN FORMA PAUPERIS
PURSUANT TO
28 U.S.C. § 1915(a)**

David Johnson (“Plaintiff”), currently detained at George Bailey Detention Facility in San Diego, California, and proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims a San Diego Police Officer used excessive force during his arrest in April 2011. (Compl. at 2.) Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a) to commence a civil action; nor has he filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a).

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in any district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay this filing fee only

1 if the party is granted leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C.
 2 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,
 3 169 F.3d 1176, 1177 (9th Cir. 1999).

4 Because Plaintiff has not prepaid the \$350 filing fee and he has not requested leave to
 5 proceed IFP, his case cannot commence and must be dismissed pursuant to 28 U.S.C. § 1914(a).
 6 *Id.*

7 **II. Conclusion and Order**

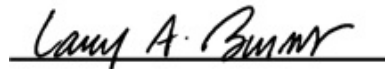
8 For the reasons set forth above, the Court hereby:

9 (1) **DISMISSES** this action sua sponte without prejudice for failing to pay the \$350
 10 filing fee or file a Motion to Proceed IFP pursuant to 28 U.S.C. §§ 1914(a) and 1915(a); and

11 (2) **GRANTS** Plaintiff **forty five (45)** days leave from the date this Order is filed to:
 12 (a) prepay the entire \$350 civil filing fee in full; *or* (b) complete and file a Motion to Proceed
 13 IFP which includes a certified copy of his inmate trust account statement for the 6-month period
 14 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b).¹

15 **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with this
 16 Court’s approved form “Motion and Declaration in Support of Motion to Proceed *In Forma*
 17 *Pauperis*.” If Plaintiff fails to either prepay the \$350 civil filing fee or complete and submit the
 18 enclosed Motion to Proceed IFP within that time, this action shall remain dismissed without
 19 prejudice and without further Order of the Court.

20 DATED: November 14, 2011

21 

22 **HONORABLE LARRY ALAN BURNS**
 23 United States District Judge
 24

25 ¹ Plaintiff is cautioned that if he chooses to proceed further with this action either by paying the
 26 full civil filing fee required by 28 U.S.C. § 1914(a), or by moving to proceed IFP, his Complaint will
 27 be screened and may dismissed before service regardless of fee payment if it is found to be frivolous or
 28 malicious, if it fails to state a claim, or if it seeks monetary relief against a defendant who is immune.
See 28 U.S.C. § 1915A(b) and 28 U.S.C. § 1915(e)(2)(b). *See Lopez v. Smith*, 203 F.3d 1122, 1126-27
 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) “not only permits but requires” the court to
 sua sponte dismiss an *in forma pauperis* complaint that fails to state a claim); *see also Rhodes v.*
Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing sua sponte screening required by 28 U.S.C.
 § 1915A(b) of all prisoner complaints).